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Attorneys for Plaintiff,
SUSAN SANDELMAN, AS TRUSTEE
OF THE ESAN TRUST

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SUSAN SANDELMAN, AS TRUSTEE
OF THE ESAN TRUST,

Plaintiff,

v.

B&B PROPERTY MANAGEMENT, LLC,
dba BELLACH'S LEATHER FOR
LIVING,

Defendant.

NO. C 08 00681 HRL

**DECLARATION OF DARRYL J.
HOROWITT IN OPPOSITION TO
DEFENDANT'S MOTION TO SET
ASIDE DEFAULT**

**[Filed concurrently with Memorandum
of Points and Authorities and Request
To Take Judicial Notice]**

Date: June 24, 2008
Time: 10:00 a.m.
Dept: Courtroom 2, 5th Floor

I, Darryl J. Horowitt, do hereby declare as follows:

1. I am a lawyer duly licensed to practice before the United States District Court, Northern District of California, and all of the courts of the State of California. I am a partner in the law firm of Coleman & Horowitt, LLP, attorneys of record for Plaintiff herein.

2. I have personal knowledge of the facts contained herein and if called upon as a witness, would testify competently thereto.

3. This declaration is filed in opposition to the Motion to Set Aside Default filed by Defendant.

4. On or about April 3, 2008, I received a call from Mikel D. Bryan.

1 5. Mr. Bryan told me that though he had not yet been formally retained, he was in
2 the process of being retained to represent B&B Management Group, LLC, the Defendant in this
3 matter. He explained that he would be meeting with his client later that day and, based on the
4 information he had at that time, it appeared that the agreement had a mediation and arbitration
5 provision that his client may wish to utilize.

6 6. I responded to Mr. Bryan by stating that if he reviewed the facts, it was clear that
7 his client had no defense to the lawsuit. I thus could not see any benefit to either mediation or
8 arbitration.

9 7. Mr. Bryan told me that he had spoken with bankruptcy counsel for Bellach's
10 Leather for Living, David Chandler, who informed him that an injunction was issued by the
11 bankruptcy court to prevent our client from entering a default judgment. I explained that a
12 hearing was to be held on April 4, 2008, in which we believed the court may dissolve the
13 previously issued TRO and that at that time, we intended to proceed with a default.

14 8. At no time during our conversation with Mr. Bryan did he ask for, nor did I agree
15 to provide him with, an extension of time to file an answer or other responsive pleading. To the
16 contrary, I made it clear that if presented with the opportunity to do so, we would apply for a
17 default judgment as soon as possible.

18 9. At no time after the bankruptcy court dissolved the injunction or prior to our
19 office filing the request for entry of default did Mr. Bryan contact me either by phone or e-mail
20 to ask that our client hold off on filing the request for entry of default that I made clear we would
21 file.

22 10. Mr. Bryan states in paragraph 4 of his declaration that he contacted me on April
23 4, 2008, to advise me that he would be filing a motion to stay the proceedings. I do not recall
24 speaking with him that day as I was in the Fresno County Superior Court in the action entitled
25 *Hall v. Sewall*, in a trial confirmation and settlement conference from 8:30 a.m. until well into
26 the afternoon. He may have left a voice mail, but I had previously made it clear to him that we
27 would file a request for entry of default as soon as possible. He thus knew, or should have
28 known, that we would have to proceed to protect our client's interest by filing the request.

1 11. Mr. Bryan never explained why his client waited well over 30 days to file a
2 responsive pleading or why we should hold off on filing the request for entry of default, other
3 than his client wanted to file a petition to stay litigation.

4 12. Mr. Bryan states in paragraph 6 of his declaration that I failed to notify him of my
5 client's intent to file a request for entry of default. That is not true. I told hm when he first
6 contacted me on or about April 3, 2008, that I would do so at the first opportunity.

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct.

9 Executed on June 3, 2008, at Fresno, California..

11 /s/DarrylJ. Horowitt
12 DARRYL J. HOROWITT